

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50-2018-CA-003359-XXXX-MB-AE

CCK CONSTRUCTION SERVICES, INC., a
North Carolina corporation,
Plaintiff,

-vs-

HUNT CONSTRUCTION GROUP, INC., an
Indiana corporation; LIBERTY
MUTUAL INSURANCE COMPANY; XL
SPECIALTY INSURANCE COMPANY;
FEDERAL INSURANCE COMPANY; and
ZURICH AMERICAN INSURANCE
COMPANY,

Defendants.

HEARING BEFORE THE HONORABLE JEFFREY DANA GILLEN

Thursday, May 23, 2019
PALM BEACH COUNTY COURTHOUSE, COURTROOM 9C
West Palm Beach, Florida
9:02 a.m. - 9:19 a.m.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4 FOLEY & LARDNER, LLP</p> <p>5 BY: RALF R. RODRIGUEZ, ESQ.</p> <p>6 2 South Biscayne Boulevard</p> <p>7 Suite 1900</p> <p>8 Miami, Florida 33131</p> <p>9 (305) 482-8414</p> <p>10</p> <p>11 On behalf of the Defendants:</p> <p>12 CARLTON FIELDS JORDEN BURT</p> <p>13 BY: CHRISTOPHER O. AIRD, ESQ.</p> <p>14 100 S.E. 2nd Street</p> <p>15 Suite 4200</p> <p>16 Miami, Florida 33131</p> <p>17 (305) 530-0050</p> <p>18</p> <p>19 On behalf of the Third-Parties:</p> <p>20 GUNSTER</p> <p>21 BY: CHRISTOPHER P. BENVENUTO, ESQ.</p> <p>22 777 South Flagler Drive</p> <p>23 Suite 500 East</p> <p>24 West Palm Beach, Florida 33401</p> <p>25 (561) 655-1980</p> <p>On behalf of Marc Taylor:</p> <p>CHANE SOCARRAS</p> <p>BY: JONATHAN C. CHANE, ESQ.</p> <p>11380 Prosperity Farms Road</p> <p>Suite 204</p> <p>Palm Beach Gardens, Florida 33410</p> <p>(561) 609-3190</p> <p>- - -</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COURT: Hang on one second. I'm sorry.</p> <p>2 Go ahead.</p> <p>3 MR. RODRIGUEZ: This case pertains to the</p> <p>4 Ballpark of the Palm Beaches project. My client</p> <p>5 CCK was the subcontractor to Hunt, who was the</p> <p>6 construction manager. The third parties, for the</p> <p>7 most part, are the developing group that controls</p> <p>8 the pursestrings on the project. They are the</p> <p>9 ones that make the decisions to pay or not to pay.</p> <p>10 My client CCK did the work. We completed</p> <p>11 the work. The third parties have refused now for</p> <p>12 three years. They were the shell contractor, and</p> <p>13 we've been asking for payment.</p> <p>14 Our understanding is that the development</p> <p>15 group has refused to release funds to Hunt, the</p> <p>16 construction manager. The issue with that is</p> <p>17 there is a pay-for-play provision in the</p> <p>18 subcontract that they are raising as a defense to</p> <p>19 our claims under the contract and against the</p> <p>20 payment bond sureties.</p> <p>21 They are also raising what they are</p> <p>22 alleging to be certain deficiencies with the shell</p> <p>23 construction work. They produced a consultant</p> <p>24 report which is identified in the request and the</p> <p>25 subpoenas by a company called SKA of Texas.</p>
<p style="text-align: right;">Page 3</p> <p>1 PROCEEDINGS</p> <p>2 - - -</p> <p>3 THE COURT: Case 18-CA-3359. Thank you.</p> <p>4 MR. RODRIGUEZ: Good morning, Your Honor.</p> <p>5 Ralf Rodriguez on behalf of the plaintiff CCK</p> <p>6 Construction.</p> <p>7 MR. AIRD: Good morning, Your Honor. Chris</p> <p>8 Aird from Carlton Fields on behalf of the</p> <p>9 defendants in the case.</p> <p>10 THE COURT: Okay. On behalf of which</p> <p>11 defendants?</p> <p>12 MR. AIRD: All the defendants, Your Honor.</p> <p>13 THE COURT: All the defendants. Okay.</p> <p>14 MR. BENVENUTO: Good morning, Your Honor.</p> <p>15 Chris Benvenuto on behalf of the nonparties with</p> <p>16 the exception of Marc Taylor.</p> <p>17 THE COURT: Okay.</p> <p>18 MR. CHANE: Jonathan Chane, Your Honor, on</p> <p>19 behalf of Marc Taylor.</p> <p>20 THE COURT: Good morning.</p> <p>21 MR. RODRIGUEZ: Your Honor, we're here this</p> <p>22 morning on a motion to compel third parties to</p> <p>23 comply with the subpoena duces tecum that we</p> <p>24 served on them.</p> <p>25 Just brief background, Judge --</p>	<p style="text-align: right;">Page 5</p> <p>1 They're construction consultant experts, and they</p> <p>2 were alleging certain deficiencies with our work.</p> <p>3 We went out there. We walked through the</p> <p>4 entire property. Frankly, Judge, we can't see or</p> <p>5 identify specifically what deficiencies they're</p> <p>6 trying to bring to our attention or the reason why</p> <p>7 they have not paid over \$1.2 million owed to our</p> <p>8 client for more than three years.</p> <p>9 What we did was we sent out a subpoena</p> <p>10 asking for records, specific records. We didn't</p> <p>11 ask for all the records on the project. If you</p> <p>12 look at the subpoena and the document therein, we</p> <p>13 are asking for specific records relating to why --</p> <p>14 well, first of all, the scope of CCK's scope of</p> <p>15 work, any correspondence with the development</p> <p>16 group in terms of that work and any reasons why</p> <p>17 they haven't paid us or any deficiencies that</p> <p>18 they're raising or communications they had with</p> <p>19 the city or the county in regard to deficiencies</p> <p>20 in that work.</p> <p>21 They basically have raised boilerplate</p> <p>22 objections saying this is too burdensome and it's</p> <p>23 not relevant. And obviously, Judge, we disagree.</p> <p>24 They're the ones that are controlling the</p> <p>25 pursestrings, and they're going to be brought into</p>

<p style="text-align: right;">Page 6</p> <p>1 this case. I understand they were brought into</p> <p>2 another case that is pending in another division</p> <p>3 by another subcontractor that hasn't been paid.</p> <p>4 They shouldn't be -- they have to comply</p> <p>5 with the records. It's been over two months now</p> <p>6 and they haven't produced one document.</p> <p>7 THE COURT: So your company, the plaintiff,</p> <p>8 was hired by whom to do this work?</p> <p>9 MR. RODRIGUEZ: We were hired by Hunt. Our</p> <p>10 contract is with Hunt, and then Hunt has the</p> <p>11 contract with the owner/developer group to finish</p> <p>12 the project.</p> <p>13 THE COURT: And then the nonparties bear</p> <p>14 what relationship to either Hunt or the plaintiff?</p> <p>15 MR. BENVENUTO: Hunt was the prime</p> <p>16 contractor to the developer. The nonparties have</p> <p>17 no privity at all with the plaintiff in this case.</p> <p>18 There is no claim that the plaintiff could</p> <p>19 possibly have against the nonparties in this case.</p> <p>20 The subpoena that was received is extremely</p> <p>21 broad. It creates an excessive undue burden on</p> <p>22 our clients. The dispute is really between Hunt</p> <p>23 and CCK. What we have offered -- they have asked</p> <p>24 for everything regarding the project in general</p> <p>25 from the Ballpark of the Palm Beaches.</p>	<p style="text-align: right;">Page 8</p> <p>1 of us sending the correspondence, they filed a</p> <p>2 motion to compel. We still have gone through --</p> <p>3 THE COURT: So you have not done it. You</p> <p>4 offered to do it, right?</p> <p>5 MR. BENVENUTO: And we do have those</p> <p>6 documents here that we can produce to the</p> <p>7 plaintiff today. But that is the burden upon</p> <p>8 ourselves to do that already beyond what they are</p> <p>9 seeking in their subpoena. What we are offering</p> <p>10 to do, that is such an excessive burden to put on</p> <p>11 a nonparty.</p> <p>12 We have offered to talk about search terms,</p> <p>13 talk about narrowing the scope, and their response</p> <p>14 has been, just produce everything in our subpoena.</p> <p>15 They are asking for everything regarding the</p> <p>16 project; videos, pictures, everything relating to</p> <p>17 any delay in the project. It's far excessive for</p> <p>18 what we should be required to do as a nonparty.</p> <p>19 MR. CHANE: Your Honor, on behalf of Marc</p> <p>20 Taylor, Mr. Benvenuto set forth the issues. He</p> <p>21 sent the letter on our behalf as well and email</p> <p>22 correspondence for my client as well.</p> <p>23 THE COURT: All right. So I'll give you a</p> <p>24 brief reply if you like.</p> <p>25 MR. RODRIGUEZ: Thank you. I appreciate</p>
<p style="text-align: right;">Page 7</p> <p>1 We ran a general search, and if we were to</p> <p>2 try to produce the documents as requested in their</p> <p>3 subpoena, it yields over 590,000 hits. For a</p> <p>4 nonparty, that is an excessive burden.</p> <p>5 What we have offered to do, Your Honor --</p> <p>6 and if I may approach, here are two letters that</p> <p>7 we have submitted. We have had back and forth</p> <p>8 discussions with CCK regarding the subpoenas. We</p> <p>9 objected to the subpoenas that we could object for</p> <p>10 wherever reasons we wished. We raised our</p> <p>11 objections.</p> <p>12 In the email correspondence that you see</p> <p>13 there, Your Honor, what we offered to do was say,</p> <p>14 look, your issue is you're not being paid by Hunt,</p> <p>15 and Hunt is telling you there are certain defects</p> <p>16 with the plaintiff's work, then we will produce to</p> <p>17 you all of the correspondence that the nonparties</p> <p>18 had with Hunt relating to your client.</p> <p>19 That way, you can determine if Hunt is</p> <p>20 being truthful with you or not or the reasons by</p> <p>21 which they're telling you you're not being paid</p> <p>22 are truthful. Really, it boils down to what we're</p> <p>23 telling Hunt and what Hunt is relaying to them.</p> <p>24 We offered to do that. We offered to do a</p> <p>25 search of those documents. In less than two hours</p>	<p style="text-align: right;">Page 9</p> <p>1 it. That's not true. We're not asking for</p> <p>2 everything. We're asking for what is relevant as</p> <p>3 to the CCK Construction scope of work, which is a</p> <p>4 very narrow issue in the entire project.</p> <p>5 They're representing to you that I want</p> <p>6 everything associated with all the delays. No,</p> <p>7 Judge. I'm asking them to produce to us documents</p> <p>8 that are relevant to any delays that my client</p> <p>9 caused to this project and to their development</p> <p>10 group and for which they are withholding payment</p> <p>11 from my client.</p> <p>12 They are the ones in control of the</p> <p>13 pursestrings. I'm not asking for everything. If</p> <p>14 you listen to Mr. Benvenuto carefully, he didn't</p> <p>15 tell you that there were 5,000 documents</p> <p>16 responsive to the request. He told you there were</p> <p>17 5,000 hits.</p> <p>18 THE COURT: He said 590,000 hits.</p> <p>19 MR. RODRIGUEZ: Hits. Now, he didn't say</p> <p>20 documents. He said hits.</p> <p>21 MR. BENVENUTO: I'll clarify. The</p> <p>22 documents.</p> <p>23 MR. RODRIGUEZ: Now he is changing his</p> <p>24 tune. Here's the point, Judge. In today's day</p> <p>25 and age -- and he hasn't told you exactly how many</p>

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1 documents. There are 590,000 documents, and I'm
2 not sure how he couched his search terms.
3 I'm only looking for documents relevant to
4 the decisions that this developer/owner group has
5 made not to fund for my client's scope of work.
6 THE COURT: So your view is that at this
7 point, nonparties are, in fact, the ones that have
8 made the decision to withhold payment?
9 MR. RODRIGUEZ: Without question, Judge.
10 In fact, Hunt's principal defense to my claim is
11 that we haven't been paid, and we don't owe you
12 payment because the owner/developer group hasn't
13 paid us. The reason they're not paying us is they
14 are alleging there is something wrong with your
15 work.
16 What I want to know is: What are you
17 claiming is wrong with CCK's work, and why are you
18 not paying us? And I'm entitled to the documents
19 between the developer group entities on those
20 subjects that are not privileged.
21 I'm entitled to the documents that are
22 related to the SKA report that they've already
23 produced to Hunt and they produced to my client.
24 There, no work product document applies. That's
25 been waived. There is no attorney-client

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1 privilege that applies because that's been waived.
2 It's been disclosed.
3 I'm entitled to know why they are not
4 paying us. The documents that we have asked for,
5 Judge, all relate to that subject matter. They're
6 narrow and specific. I could have asked for a lot
7 more. It took us a long time.
8 My specialty is construction litigation,
9 Judge. Construction cases are document intensive.
10 This is nothing new. What I want to do is if you
11 could require them to produce, I will work with
12 them to come up with search terms, but they have
13 not offered to produce one document to me.
14 In fact, they are complaining that it's too
15 burdensome. In today's day and age, Judge, these
16 sophisticated parties -- these are the Houston
17 Astros and the Washington Nationals. These are
18 big players. This is not burdensome at all,
19 Judge.
20 They can produce this stuff with a snap of
21 a finger. That's what computers are for. All of
22 this stuff, electronic. And most of their
23 discovery should be electronic to us. The emails,
24 that's easy enough to search because you do your
25 search terms and they pop up.

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1 The most burdensome part of this, I'll
2 admit, is going to be probably their privilege
3 review. With that, I'll work with them. I'm not
4 asking for privileged documents.
5 I'm asking for documents that are relevant
6 as to why they made the decision not to fund on
7 this project. They're the ones in control of
8 that, Judge.
9 MR. BENVENUTO: Your Honor, if I may
10 briefly respond?
11 THE COURT: Yes.
12 MR. BENVENUTO: On the suggestion -- if I
13 may approach. They are going beyond because
14 Request No. 2 talks about all delays regarding the
15 project. That's number one. Number two, we have
16 offered, and we are standing here today saying we
17 are willing to turn over -- I have a flash drive.
18 THE COURT: No, because 2 says, "Any and
19 all documents relating to delays and completion of
20 the project." It doesn't say all documents
21 relating to the project.
22 MR. BENVENUTO: No, no. The completion of
23 the project.
24 THE COURT: Well, delays.
25 MR. BENVENUTO: It's not limited to CCK's

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1 work. We're here and offering to produce to them
2 our communications with Hunt, who is their
3 defendant in the case, relating to any issues, any
4 delays, any issues involving CCK.
5 They're going beyond that and saying, we
6 want all of your internal communications, which is
7 obviously going to require some privilege, work
8 product, attorney-client review that frankly, has
9 no relevance to what is ultimately communicated to
10 Hunt.
11 If Hunt is not receiving that information,
12 then how can Hunt say, well, we're not going to
13 pay you for this. We're giving them everything we
14 have given to Hunt, so Hunt can say -- they can
15 make the determination for themselves whether or
16 not Hunt is being truthful with them or not.
17 On the question of the burden, I can
18 produce a statement here, a review from an ESI
19 expert. We didn't pick this number out of thin
20 air. The suggestion we could produce these
21 documents in a snap of a finger is patently false.
22 We're talking over 5,000 documents for a
23 review which would create an excessive burden.
24 According to an ESI expert, the calculations of
25 attorney time reviewing all that privilege review,

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1 you're talking close to 80- to \$100,000 to review
2 for a nonparty to have to review those documents.
3 Our suggestion, Your Honor, would be we
4 produce the documents we are willing to produce.
5 If they are not satisfied with that, we could come
6 up with some other terms.
7 MR. RODRIGUEZ: Judge, I don't have the
8 documents from Hunt. That's the issue. That's
9 the problem. I would not be here asking for those
10 documents if I didn't need them. Hunt has given
11 me what they have. Now I need these other
12 documents that Hunt doesn't have that the
13 owner/developer group has that is relevant to my
14 case.
15 That is hampering my ability to move this
16 case forward. It's been three years since this
17 project got done. They're the ones who are making
18 the decision not to pay. They should be required
19 to tell me why. It's ridiculous, Judge.
20 MR. AIRD: From my position, I can give you
21 some general context. The arguments you're
22 hearing now is that the developer/owner group is
23 kind of like the tail on the dog. That's far from
24 the fact. They are the actual dog in this case.
25 No offense.

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1 We filed a pending motion for leave to add
2 them in this lawsuit, and that's set to be heard
3 before Your Honor on June 6th.
4 THE COURT: I'm not surprised.
5 MR. AIRD: At the heart of this, they are
6 the ones refusing to pay us. They are in the
7 middle. We tried to work this out with them, as
8 any good client would, with who hired them, and
9 they refused to provide documents to back up the
10 arguments they are raising; we caused all the
11 delays with all these issues.
12 We tried for months to work with them and
13 we do not have the backup. They are the ones
14 driving this. They are the ones who -- it's not
15 just communications. I won't get into the weeds
16 because it's not my motion, but it's not just
17 communications with Hunt and the ownership group
18 that is important. It's all the documents that
19 would show why they are failing to pay.
20 Privity is not a requirement for discovery.
21 I have never heard that before. It is: Are these
22 documents relevant to the case and the issues in
23 the case? From Hunt's perspective, the ownership
24 group has a lot to do with this and they are
25 coming into this now.

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1 THE COURT: All right. This is what I'm
2 going to do.
3 MR. CHANE: I'm sorry, Judge. I just
4 wanted to add something.
5 THE COURT: Sure.
6 MR. CHANE: I just wanted to add one
7 additional thing on behalf of Marc Taylor, Inc. I
8 don't want to get us wrapped up with the Houston
9 Astros. We are a small company. It's Mr. Taylor.
10 He has some employees.
11 What he has though, are literally hundreds
12 of thousands of emails. He doesn't have an IT
13 department who is going to be able to go and
14 search this as counsel is suggesting. This is an
15 overwhelming project he would need to undertake in
16 order to find the documents that are as broad as
17 they are seeking in this subpoena.
18 To the extent there is some requirement he
19 needs to do it, there needs to be some agreement
20 how this is going to be undertaken, who is going
21 to pay for it. He is not wrapped up, I don't
22 believe, in what is going to be added to this
23 litigation.
24 THE COURT: Got it. I'm going to order the
25 nonparties to turn over whatever it is they have

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1 now to Mr. Rodriguez. Then I'm going to give
2 Mr. Rodriguez time to go through those and see if
3 there is anything additional or different from
4 what has already been provided to Mr. Rodriguez by
5 Hunt.
6 Then I will entertain this motion further,
7 or further request for additional discovery after
8 the fact. You said your motion is to include --
9 MR. AIRD: Third party to the complaint.
10 THE COURT: Third-party complaint. Okay.
11 It's set for hearing before me on June 6th.
12 MR. AIRD: Thursday, June 6th.
13 THE COURT: Next week I'm out for advanced
14 judicial college, so the week after that. So the
15 6th would probably be like Thursday of next week.
16 MR. AIRD: That's correct, Your Honor.
17 THE COURT: By that time, you'll have had
18 more than enough time, Mr. Rodriguez, to go
19 through that additional, perhaps additional
20 information. I'm going to entertain that motion
21 at that time.
22 MR. RODRIGUEZ: That was my question.
23 THE COURT: What time is that hearing set
24 for?
25 MR. AIRD: 8:45 on motion calendar.

1 THE COURT: And I will set that last for
2 that day. I don't know what else I have on
3 June 6th, but I will hear that last. If I go into
4 somebody else's time, I'll deal with it then.

5 MR. RODRIGUEZ: We noticed this motion for
6 June 6th at 8:45 subject to our review of these
7 documents.

8 THE COURT: Correct. And I'll hear it
9 again at that time. Thank you all.

10 MR. RODRIGUEZ: Thank you, Judge. I much
11 appreciate it.

12 Do you need on order, Judge, on this?

13 THE COURT: Why don't you just grab a
14 blank.

15 MR. RODRIGUEZ: I have a black order.

16 THE COURT: Thank you.

17 (The Hearing was concluded at 9:19 a.m.)

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1 CERTIFICATE OF REPORTER

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4 I, Elizabeth Schiller, Court Reporter,
5 State of Florida at Large, certify that I was authorized
6 to and did stenographically report the foregoing
7 proceedings and that the transcript, page 1 through 19,
8 is a true and complete record of my stenographic notes.

9

10 Dated this 7th day of June, 2019 in PALM
11 BEACH COUNTY, FLORIDA.

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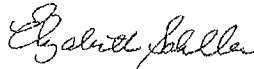
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Elizabeth Schiller,
Court Reporter

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